

**RULES
OF
DEPARTMENT OF REVENUE
COLLECTIONS DIVISION**

**CHAPTER 1320-2-1
TAX ENFORCEMENT PROCEDURES ACT**

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1320-2-1-.01 PARTIAL PAYMENT AGREEMENTS. The Commissioner may, in his discretion, agree to allow a taxpayer pay a liability to the department in installments over an extended period of time. Interest on such an agreement shall be computed on the basis of the total tax, penalty, and interest due at the time the agreement is executed by the Commissioner. Interest on such an agreement shall be at a rate to be determined by the Commissioner by filing a notice of such rate with the Secretary of State.

Authority: T.C.A. §§67-1-102 and 67-1-801. Original rule filed June 22, 1989; effective September 27, 1989.

1320-2-1-.02 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1402. *Administrative History:* Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.03 LEVY AND DISTRAINT-NOTICE AND DEMAND. If any person liable to pay any tax neglects or refuses to pay the same within ten (10) days after notice and demand, it shall be lawful for the commissioner or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy. A levy may be made hereunder upon: (1) all property owned by the taxpayer, (2) all rights to property belonging to such taxpayer, and (3) all property or rights to property possessed by any person on which property or rights to property there is a lien provided by law for the payment of such tax.

(Rule 1320-2-1-.03, continued)

Authority: T.C.A. §§67-1-1439 and 67-1-1405. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989. Amendment filed June 29, 2000; effective September 11, 2000.

1320-2-1-.04 SEIZURE AND SALE AUTHORIZED.

- (1) The term "levy", includes the power of distraint and seizure by any means. It is contemplated that the power of distraint and seizure shall be exercised by the Commissioner or his delegate as an exclusively administrative procedure. The exercise of the power of distraint and seizure shall be a distinctively nonjudicial process. Any commissioned officer or employee of the Department of Revenue is authorized to serve a levy which is lawfully executed under the provisions of this chapter by the Commissioner or his delegate. A levy intends only to property in possession of the person upon whom a levy is made and to those obligations of such person to the taxpayer actually existing at the time of the levy.
- (2)
 - (a) A levy may be accomplished under the provisions of this chapter by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy. Such property or rights to property include, but are not limited to, bank accounts, savings and loan association shares, evidences of debt, receivables, securities, and accrued commissions, salaries, wages, income, or other compensation.
 - (b) Property which is nonsalable under the laws of this state or property which has no marketable value in this state, such as but not limited to open containers of beverage or food or items which have intrinsic value only, shall not be levied upon, except upon specific direction of the Commissioner or his delegate.

Authority: T.C.A. §§67-1-1439, 67-1-1404 and 67-1-1406. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.05 REPEALED.

Authority: T.C.A. §§67-1-1439, 67-1-1409, 67-1-101 and 67-6044 to implement Title 67, Chapter 60. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.06 REPEALED.

Authority: T.C.A. §§67-1-1439, 67-1-1410, 67-1-101 and 67-6044 to implement Title 67, Chapter 60. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.07 EXEMPT PROPERTY.

Expensive items of wearing apparel, such as furs or jewelry, which are luxuries and are not necessary for the taxpayer or for members of his family, are not exempt from levy and are, therefore, subject to levy.

Authority: T.C.A. §§67-1-1439 and 67-1-1407. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.08 COURT ACTION-BOND-INTEREST PAID BY STATE.

- (1) Any person against whom a levy and distraint has been made shall have the right to stay the sale of seized property if a suit challenging the legality of the collection of the tax has been filed by the taxpayer and is pending in a court of competent jurisdiction at either trial or appellate level.
- (2) The right to stay a sale of property seized under a levy is conditioned upon the pendency of court action and the posting of a bond by the taxpayer in an amount equaling the amount of the tax liability.

(Rule 1320-2-1-.08, continued)

(which includes the tax together with any penalty or interest payable). The bond is acceptable in lieu of payment of any further tax until the trial or review on appeal of the suit contesting the legality of a like tax previously assessed and collected.

- (3) The Tax Enforcement Procedures Act does not provide any additional method or procedure for procedure for review of a ruling of the Commissioner other than that already provided by law. It does afford a delinquent taxpayer the right to post a bond in lieu of satisfying a levy and distraint when a levy is made while proceedings are pending to have an adjudicated tax case reviewed in a higher court or during the pendency of an original suit contesting the subject tax in a lower court of competent jurisdiction. The objective of this provision is to avoid a closing of taxpayer's business during the period when the collection of a tax is in the process of being contested in any manner otherwise provided by law, by allowing the taxpayer to post a bond for additional taxes accruing under the same theory of tax liability. Where the taxpayer has not previously challenged the ruling of the Commissioner on the additional tax sought to be collected by filing a suit, contesting the collection of the subject tax prior to the date of levy there is no right extended under this chapter to day the sale of seized property by the posting of bond in lieu of payment of the tax.

Authority: T.C.A. §§67-1-1439 and 67-1-1411. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.09 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1412. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.10 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1413. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.11 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1414. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.12 NOTICE OF SALE.

- (1) The Commissioner or his delegate may use other methods of giving notice of sale and of advertising seized property, in addition to those referred to in T.C.A. §67-1-1415, when he believes that the nature of the property to be sold is such that a wider or more specialized coverage will enhance the possibility of obtaining a substantially higher price for the property.
- (2) When the property to be sold is real property it shall be sufficient if the notice specifies the property to be sold property to be sold as that located at a particular mailing address and which is otherwise sufficient to locate the property, identify the improvements thereon, if any, and indicate whether it is a residence, commercial property, a farm, or other property devoted to other specialized uses. A description of real property by metes and bounds shall not be required; however, the approximate acreage, or dimensions where more appropriate, shall be specified in the notice.

Authority: T.C.A. §§67-1-1439 and 67-1-1415. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1.13 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1416. *Administrative History:* Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1.14 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1417. *Administrative History:* Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1.15 MANNER AND CONDITIONS OF SALE.

- (1) The manner of sale shall be determined by the Commissioner or his delegate before publication of notice thereof. The sale shall not be conducted in any manner other than as determined and announced. The manner of sale shall be either: (a) at public auction at which open competitive bids shall be received, or
 - (a) at public auction at which open competitive bids shall be received, or
 - (b) at public sale under sealed bids. The following rules, in addition to the other rules provided for herein, shall be applicable to a sale of property seized by levy at public sale under sealed bids:
 1. Bids shall be solicited through a public notice of sale and invitation to bidders.
 2. A bid shall be submitted on a form which shall be furnished by the Commissioner or his delegate upon request. The form shall be completed in accordance with the instructions appearing thereon.
 3. The seized property may be offered for sale
 - (i) as separate items, or
 - (ii) as groups of items, or
 - (iii) in the aggregate, or
 - (iv) both as separate items (or in groups) and in the aggregate. If offered for sale under this provision, the property shall be sold under the method which produces the highest aggregate amount.

The Commissioner or his delegate shall select whichever of the four foregoing methods of offering the property for sale as, in his opinion, is most feasible under all of the facts and circumstances of the case. Such selection shall be made prior to notice of sale if the manner of sale is under sealed bids but may be made at the sale if it is at public auction. If the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal property as a group, or as groups, or as separate items, are first offered separately.

- (2) The officer conducting the sale may announce the minimum price before the sale begins or, in his discretion, may simply state that a minimum price has been determined and defer announcement of the amount of the minimum price until after the receipt of the highest bid. In the latter event and if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made by him.
- (3) Property seized by levy shall be offered for sale upon whichever of the following terms is fixed by the Commissioner or his delegate as may be determined by him and as announced in the public notice of sale:

(Rule 1320-2-1.15, continued)

- (a) Payment in full upon acceptance of the highest bid without regard to the amount of such bid, or
 - (b) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20% of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.
- (4) The Commissioner or his delegate may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in T.C.A. §67-1-1415 when he believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.
- (5) When it appears to the Commissioner or his delegate that an adjournment of the sale will best serve the interest of the state or that of the taxpayer, he may adjourn, or cause the officer conducting the sale to adjourn, the sale from time to time; but the sale shall be held no later than one month after the date fixed in the original notice of sale.
- (6) (a) If payment in full is required upon acceptance of any bid and it is not then and there paid, the officer conducting the sale shall forthwith proceed again to sell the property in the manner provided by T.C.A. §67-1-1418 and the rule prescribed thereunder. If the manner of sale is at public auction the officer conducting the sale may declare the bid of the defaulting bidder to be null and void for failure to make full payment of the amount bid. He may proceed forthwith to sell the property to any other bidder offering the highest bid from among those bidders remaining on the premises; but he shall not sell it for less than the minimum price determined by the Commissioner or his delegate. If no additional bids are received, or if the highest bid thereafter received is for not as much as the minimum price, the property shall again be advertised and sold as provided by law.
- (b) If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate allowed by the Tax Enforcement Procedures Act from the date of sale; or, in the discretion of the Commissioner or his delegate, the sale may be declared null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided by law. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the states such amount forfeited shall be paid over by the Commissioner and distributed in the same manner as the subject tax.

Authority: T.C.A. §§67-1-1439 and 67-1-1418. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989. Amendment filed June 28, 2000; effective September 11, 2000.

1320-2-1.16 SALE OF PERISHABLE GOODS.

The Commissioner or his delegate shall, as soon as practicable, make public sale of perishable property in accordance with the following terms and conditions:

- (1) If the owner can readily be found, a notice shall be given to him. A notice of sale shall also be posted in two public places in the county in which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The Commissioner or his delegate may give such other notice and in such other manner as he may deem advisable under the circumstances. The time of sale shall be determined by the Commissioner or

(Rule 1320-2-1.16, continued)

his delegate without regard to the restrictive provisions of T.C.A. §67-1-1415 and the rule prescribed thereunder. If a levy upon perishable goods has been made pursuant to a jeopardy assessment, as provided by T.C.A. §67-1-1431, the time of sale may be fixed without regard to the requirements of either T.C.A. §67-1-1405, 67-1-1406(a), or 67-1-1415.

(2) The property shall be sold at public auction to the highest bidder.

(3) The purchase price shall be paid in full upon acceptance of the highest bid.

Authority: T.C.A. §§67-1-1439 and 67-1-1419. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1.17 REDEMPTION OF PROPERTY.

When any real property is redeemed, the Commissioner or his delegate shall cause an entry of the fact to be made upon the record of sale kept in accordance with T.C.A. §67-1-1424 and such entry shall be evidence of such redemption. The party who redeems the property shall notify the Commissioner or his delegate of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

Authority: T.C.A. §§67-1-1439 and 67-1-1420. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1.18 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1421. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1.19 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1421. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1.20 EXECUTION OF DEED TO REAL PROPERTY.

In the case of any real property sold as provided in T.C.A. §67-1-1414 through 67-1-1418, and not redeemed in the manner and within the time prescribed in T.C.A. §67-1-1420 the Commissioner or his delegate shall execute (in accordance with the laws of the state pertaining to sales of real property under execution) to the purchaser of such real property at the sale, or his heirs or assigns, upon surrender of the certificates of sale, a deed of the real property so purchased, reciting the facts set forth in the certificates.

Authority: T.C.A. §§67-1-1439 and 67-1422. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1.21 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1422. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1.22 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1423. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1-.23 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1424. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1-.24 EXPENSE OF LEVY AND SALE.

- (1) The Commissioner or his delegate shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, the posting and advertising of notices, the cost of conducting the sale, the cost of preparation, recordation and service of lawfully required documents and any other expenses actually incurred in connection with or properly attributable to the levy and sale. There shall be no charges made for any such services performed by authorized commissioned officers or employees of the Department of Revenue while acting in their official capacities.
- (2) In case real and personal property (or several tracts of real property) are sold in the aggregate, the Commissioner or his delegate shall properly apportion the expenses to the real property (or to each tract where appropriate).

Authority: T.C.A. §§67-1-1439 and 67-1425. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.25 APPLICATION OF PROCEEDS.

- (1) Any money realized by proceedings under the Tax Enforcement Procedures Act whether by seizure or by surrender (except pursuant to subsection (b)(2) of T.C.A. §67-1-1412 or by sale of seized property, or by sale of property redeemed for the state (if the interest of the state in such property was a lien arising under the provisions of this title) shall be applied as hereinafter indicated.
 - (a) First, against the expenses of the proceedings.
 - (b) Taxes such as ad valorem taxes on the property seized shall only be paid after the expenses in (a) if the state does not have a senior lien for taxes pursuant to T.C.A. §67-1-1403.
 - (c) The amount, if any, remaining after complying with the provisions of subparagraphs (a) and (b), as hereinabove stated, shall then be applied against the liability in respect of which the levy was made or the sale was conducted.
- (2) Any surplus proceeds remaining after the application of paragraph (1), as hereinabove stated, shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Commissioner or his delegate to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto. If there are multiple claims to surplus proceeds, the Commissioner may file an interpleader action as to any surplus funds in the Davidson County Chancery Court.

Authority: T.C.A. §§67-1-1439 and 67-1426. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.26 RELEASE OF LEVY.

- (1) The Commissioner or his delegate may release the levy upon either all or part of the property or rights to property levied upon where the Commissioner or his delegate determines that such action will facilitate the collection of the liability. Such a release shall not operate to prevent any subsequent levy upon the same or other property of the delinquent taxpayer.

(Rule 1320-2-1-.26, continued)

- (2) A levy may be released under the provisions of T.C.A. §67-1-1427 only if the delinquent taxpayer complies with such of the conditions thereunder as the Commissioner or his delegate may require.
- (3) The Commissioner or his delegate may release the levy as authorized hereunder if any one or more of the - following arrangements are made or circumstances are found to exist:
 - (a) The delinquent taxpayer offers, and there is accepted by the Commissioner or his delegate, a satisfactory arrangement placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.
 - (b) The delinquent taxpayer delivers an acceptable bond to the Commissioner or his delegate conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the law.
 - (c) The delinquent taxpayer or any other person having an interest in the property levied upon pays to the Commissioner or his delegate an amount determined by him to be equal to the interest of the state in the seized property or the part of the seized property to be released.
 - (d) The delinquent tax payer executes an agreement directing his employer to pay to the Commissioner or his delegate amounts deducted from the employee's salaries or wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with the Commissioner or his delegate, until the full amount of the tax liability is satisfied, and such agreement is accepted by the employer.
 - (e) The delinquent taxpayer makes satisfactory arrangements with the Commissioner or his delegate to pay the amount of the tax liability in installments.
 - (f) The delinquent taxpayer executes an agreement to extend the statute of limitations on the collection of taxes.
 - (g) The Commissioner or his delegate may release the levy if he determines that the value of the interest of the state in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property to be released, is insufficient to cover the expenses of the sale of such property and such action will facilitate the collection of the liability to the extent that the incurrence of additional liability is thereby avoided.

Authority: T.C.A. §§67-1-1439 and 67-1427. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.27 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1428. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.28 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1429. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.29 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1430. **Administrative History:** Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.30 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1431. *Administrative History:* Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.31 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1431. *Administrative History:* Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.32 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1432. *Administrative History.* Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.33 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1432. *Administrative History:* Original rule filed June 7, 1974. Repealed June 22, 1989; effective September 27, 1989.

1320-2-1-.34 EFFECT OF ENFORCEMENT OF OTHER LIENS.

If the state is not joined as a party, a judgment in any civil action or suit, or a judicial sale pursuant to such a judgment, with respect to property on which the state has or claims a lien under the provision of this chapter.

- (1) shall be made subject to and without disturbing the lien of the state, if notice of such lien of the state has been filed in the place provided by law for such filing at the time such action or suit is commenced, or
- (2) if a judicial sale of property pursuant to a judgement in any civil action or suit to which the state is not a party discharges a lien of the state arising under the provisions of this chapter, the state may claim, with the same priority as its lien had against the property sold, the proceeds of such sale (exclusive of the cost of such sale) at any time before the distribution of such proceeds is ordered. For the purposes of this section, a judicial sale is one conducted under judicial proceedings which are plenary in nature and proceed on formal pleadings.

Authority: T.C.A. §§67-1-1439 and 67-1-1433. *Administrative History:* Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.35 NONJUDICIAL SALES.

- (1) A sale of property on which the state has or claims a lien, or a title derived from enforcement of a lien under the provisions of this chapter shall, except as otherwise provided, be made subject to and without disturbing such lien or title of the state if notice of such lien or title was recorded in the place provided by law for such filing or recording more than thirty (30) days before such sale and the state is not given notice of such sale in the manner prescribed in subsection (2) hereof when such sale is made pursuant to:
 - (a) an instrument creating a lien on such property or
 - (b) a confession of judgement on the obligation secured by such an instrument, or
 - (c) a nonjudicial sale under a statutory lien on such property.

The term "nonjudicial sale" as used herein includes, but is not limited to, the divestment of the taxpayer's title to property which occurs by operation of law as well as those which result from a public or a private sale. A

(Rule 1320-2-1-.35, continued)

nonjudicial sale made pursuant to a lien even though notice of the nonjudicial sale is given to the state through the Commissioner or his delegate.

- (2) (a) Except in the case of the sale of perishable goods described in paragraph (2)(c) hereof, a notice of a nonjudicial sale shall be given in writing, by registered or certified mail or by personal service, not less than 25 days prior to the date of such sale. Such notice shall be addressed to the Commissioner of Revenue. It shall be submitted in an envelope addressed to the attention of, or personally delivered to, the Director, Tax Enforcement Division.

Notices required to be made under the provisions of this section shall be considered timely made only if actual notice is received by the Commissioner or his delegate in a timely manner. In the event that notice of a sale is given in accordance with the provisions hereof with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the

Commissioner in the same manner as is required with respect to the previously scheduled sale. In any case in which notice of sale is required to be given with respect to a scheduled sale and notice of the sale is not given, any postponement of the scheduled sale shall not affect the rights of the state under T.C.A. §67-1-1433.

- (b) Notwithstanding the notice requirements of this section, any sale of property described in subsection (1) hereof shall discharge or divest such property of the lien or title of the state if the Commissioner to his delegate consents to the sale of such property free of such lien or title. The Commissioner or his delegate may, in his discretion, give such consent for the state with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the Commissioner or his delegate may require. The Commissioner or his delegate may not, however, consent to a sale of property under this section after the date of such sale or where request therefor was not timely made (i.e., before the sale) and in the same manner as a notice of sale .

Any person desiring the state's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien shall submit a written application therefor to the Commissioner of Revenue requesting that such consent be given. The application shall be submitted in an envelope addressed to the attention of, or personally delivered to, the Director, Tax Enforcement Division. It shall contain a declaration that it is made under the penalties of perjury and shall include the following information:

1. The name and address of the person submitting the notice of sale.
 2. A copy of each notice of state tax lien affecting the property to be sold and a copy of the financing statement or trust deed or other lien interest being enforced.
 3. With respect to the property to be sold, a detailed description, including location, of the property affected by the notice, the date, time, place, and terms of the proposed sale of the property, and in the case of a sale of perishable property described in paragraph (2)(c) of this section, a statement of the reasons why the property is believed to be perishable.
 4. The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.
- (c) Notwithstanding the notice requirements of this section, any sale described in subsection subsection (1) involving personal property which is liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or

(Rule 1320-2-1-.35, continued)

divest such property of the lien or title of the state if notice of such sale is given to the Commissioner or his delegate at any time before such sale. Thus, in such cases the requirement that such notice shall be given more than 25 days before such sale is not applicable. However, notice thereof must be timely given, i.e., before the sale, and in the manner described here in above in all other respects. If a notice of a nonjudicial sale is timely given in the manner described, the nonjudicial sale of perishable goods shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien of the state in the property.

The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale of such goods as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the state in the same manner and with the same priority as the liens and claims of the state had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph the seller shall be personally liable to the state for an amount equal to the interest of the state in the fund. However, even if the proceeds of the sale are not so held by the seller but all of the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the state. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Commissioner or his delegate of the postponement.

Authority: T.C.A. §§67-1-1439 and 67-1-1433. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.36 REDEMPTION OF PROPERTY BY THE STATE.

- (1) In the case of a nonjudicial sale of real property to which T.C.A. §67-1-1433(b) applies, which was made to satisfy a lien prior to that of the state, the Commissioner or his delegate may redeem such property within the period allowable for redemption of real property with respect to other secured creditors. The right of redemption of the state exists under this section even though the Commissioner or his delegate has consented to the sale under T.C.A. §67-1-1433(b)(2)(B).
- (2) In any case in which the state redeems real property pursuant to subsection (1) hereinabove, the amount to be paid for such property shall be the amount paid by the purchaser plus interest at the rate allowed by the Tax Enforcement Procedures Act from the date of purchase to the date of redemption. In the case of a purchaser who is the holder of the lien being foreclosed, the amount paid by the state shall be considered to be the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale.

Authority: T.C.A. §§67-1-1439 and 67-1-1433. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.37 CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may file a claim with the state Board of Claims or with the Davidson County Chancery Court. It shall be incumbent upon the person filing such a claim to show that he has an interest in, or a lien on, such property which is senior to the interest of the state and that such property was wrongfully levied upon by the state. If such claim is based solely upon a failure of the state to have filed a notice of its lien for taxes the claim shall not be recognized unless the claimant produces evidence of a lien recorded prior to the date of levy.

Authority: T.C.A. §§67-1-1439 and 67-1-1434. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.38 SALE OF PERSONAL PROPERTY.

- (1) Any personal property (except bonds, notes, checks, and other securities) acquired by the state in payment of or as security for debts arising under any provisions of this chapter or the provisions of any prior law or the corresponding provisions of any subsequent law may be sold by the Commissioner or his delegate. Bonds of the State of Tennessee or of the United States shall not be sold by the Commissioner or his delegate but shall be transferred to the Treasurer of the state for redemption. All other bonds, notes, checks, and any other securities shall be disposed of in such manner as the Commissioner may direct.
- (2) The time, place, manner, and terms of sale of personal property acquired by the state as prescribed hereinabove shall be as follows:
 - (a) The personal property may be sold at any time after it has been acquired by the state. A public notice of sale shall be posted at the county courthouse nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of sale. In addition, the Commissioner or his delegate may use such other methods of advertising as he believes will result in obtaining the highest price for the property. The place of sale shall, except as provided hereinafter, be within the county where the property was originally acquired by the state. However, if the Commissioner or his delegate believes that a substantially higher price may be obtained, the sale may be held outside such county and at any other place within the state.
 - (b) The officer conducting the sale may reject any and all bids and withdraw the property from the sale if, in his judgment, the best interest of the state will be served thereby. Whenever it appears to the officer conducting the sale that an adjournment of the sale will best serve the interest of the state, he may order and announce the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale shall again be given.
 - (c) In the case of default in payment of the bid price any amount deposited with the state will be retained as liquidated damages, but the amount thereof shall not exceed \$200 unless the actual loss sustained is greater.
- (3) The Commissioner or his delegate may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such case, the Commissioner or his delegates may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200 thereof unless the actual loss sustained is greater, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.
- (4) The property shall be offered for sale upon whichever of the following terms is fixed by the Commissioner or his delegates in the public notice of sale.
 - (a) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or
 - (b) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200 an initial payment of \$200 or 20% of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of sale.
- (5) The property may be sold at either:
 - (a) public auction, at which open competitive bids shall be received, or

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- (b) public sale under sealed bids.
- (6) The following rules, in addition to the other rules provided herein shall be applicable to public sales under sealed bids.
- (a) Bids shall be solicited by the Commissioner or his delegates through a public notice of sale.
 - (b) A bid shall be submitted on a form which will be furnished by the Commissioner or his delegates upon request. The form shall be fully completed in accordance with the instructions appearing thereon.
 - (c) If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20% of such bid or \$200 whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of the State of Tennessee or by a United States Postal Service, bank, express, or telegraph money order.
 - (d) Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left-hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed thereafter in the announcement of the adjournment of the sale.
 - (e) The officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount, the officer conducting the sale shall determine the successful bidder by drawing lots unless in his opinion a higher price can be obtained for the property that has been bid. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale where feasible and in no event later than 30 days thereafter.
 - (f) A bid may be withdrawn on written or telegraphic request received from the bidder at any time prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.
- (7) All payments for property sold pursuant to this section shall be made by cash for by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of the State of Tennessee, or by a United States postal service, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, when required, the officer conducting the sale may forewith proceed again to sell the property in the manner provided in paragraph (e) hereof. If deferred payment is permitted, the initial payment shall be made on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.
- (8) The risk of loss shall be on the purchaser of the property upon the acceptance of his bid and notification thereof given the purchaser by the Commissioner or his delegate. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment or part of the purchase price for the property is deferred, the Commissioner or his delegate will retain possession of such property as security for the payment of the balance of the purchase price; and, as agent for the purchaser, he will cause the property to be cared for until the purchase price

(Rule 1320-2-1-.38, continued)

has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such latter event, all charges and expenses incurred in caring for the property after acceptance of the bill shall be borne by the purchaser.

- (9) The officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price. Such certificate shall transfer to the purchaser all right, title, and interest of the state in and to the property sold.
- (10) In the case of the resale of any such property, as prescribed herein, the net proceeds of such resale shall be paid over by the Commissioner and distributed in the same manner as the subject tax and he shall account for the proceeds and all expenses connected therewith.
- (11) Notwithstanding the other paragraphs of this rule, the Commissioner or his delegate may, when he deems it advisable and in the best interest of the state to do so, take charge of and assume responsibility for any property to which this section is applicable. In such case, the Commissioner or his delegate shall immediately notify in writing the person to whom such property or rights to property belongs and specify therein the property involved, the reason for the action and his intentions with respect thereto.

Authority: T.C.A. §§67-1-1439 and 67-1-1435. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.39 ADMINISTRATION OF REAL ESTATE.

- (1) The Commissioner or his delegate may sell any real estate owned or held by the state under the provisions hereinabove stated, relating to sale of personal property except where the context thereof is specifically inapplicable to real estate.
- (2)
 - (a) Upon payment in full of the purchase price, the Commissioner or his delegate shall execute a quit claim deed to the purchaser. Such deed shall be considered and operate as a conveyance of all the right, title, and interest the state had in and to the real property thus sold.
 - (b) Until real estate is sold, the Commissioner or his delegate may, in the exercise of his discretion and if such action is deemed to be in the best interest of the state, lease such property to the debtor or any other person considered to be an acceptable lessee by the Commissioner or his delegate. The terms of such lease shall be in accordance with instructions issued by the Commissioner, provided that a lease to anyone other than the debtor shall be made subject to the latter's right of redemption.
 - (c) In cases where real estate has or may become the property of the state in payment of or as security for a debt and such debt shall have been paid, together with interest and penalties payable thereon, to the state at any time from the date of the acquisition of such real estate to the date of sale of such to another person, the Commissioner or his delegate may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.
 - (d) The Commissioner or his delegate shall account for the proceeds of all sales or leases, or releases of the property and for all expenses connected with the maintenance, sale, lease or release of the property, and the net proceeds shall be paid over by the Commissioner and distributed in the same manner as the subject tax.

Authority: T.C.A. §§67-1-1439 and 67-1-1436. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.40 EXAMINATION OF BOOKS AND WITNESSES.

- (1) The following Commissioner officers and employees of the Department of Revenue are authorized to issue summons:
 - (a) The Commissioner of Revenue.
 - (b) The Deputy Commissioner of Revenue.
 - (c) Any Assistant Commissioner of Revenue.
 - (d) General Counsel or Special Counsel for the Department.
 - (e) The Director, Tax Enforcement Division.
 - (f) The Director, Motor Vehicle Division.
 - (g) The Director, Franchise, Excise, and Income Tax Division.
 - (h) The Director, Petroleum Tax Division.
 - (i) The Director, Miscellaneous Tax Division.
 - (j) The Director, Sales and Use Tax Division.
 - (k) The Director and all special agents, Special Investigations Unit.
- (2) The officers and employees designated above may designate any other employee of the Department of Revenue before whom a person summoned pursuant to T.C.A. §67-1-1437 shall appear. Any such other employee, when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records,

or other data produced in compliance with the summons. The authority to issue a summons may not, however, be redelegated by the person to whom it is delegated.

Authority: T.C.A. §§67-1-1439 and 67-1-1437. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.41 SUMMONS.

- (1) A summons shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode. The certificate of service of the summons, signed by the person serving it, shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

The Commissioned officers and employees of the Department of Revenue authorized to issue a summons are also authorized to serve a summons issued under such section. While the authority to issue a summons may not be redelegated, the authority to serve a summons may be redelegated by any officer or employee who is authorized to issue a summons. However, the authority to serve a summons may be redelegated only to such employees of the Department of Revenue who are duly Commissioned as officers or employees thereof by the Commissioner of Revenue and have authority to perform all duties conferred upon such officers under all laws and regulations administered by the Department of Revenue, including the authority to investigate, and to require and receive information

(Rule 1320-2-1-.41, continued)

as to all matters relating to such laws and regulations. It is recommended, but not required, that all such officers display their Commission or credentials to any person upon whom a summons is served by them.

- (2) The time and place of examination shall be such time and place as may be fixed by any commissioned officer or employee of the Department of Revenue as are reasonable under the circumstances. The date fixed for an appearance before an officer of the department shall be not less than 10 days from the date of service of the summons. No taxpayer shall be subjected to unnecessary examinations or investigations. Only one examination of a taxpayer's books of account shall be made for each taxable year with respect to any one specific tax liability unless the taxpayer requests otherwise or unless an authorized officer of the department, after investigation, determined there is a compelling reason therefore and notifies the taxpayer in writing that an additional examination with respect to any one or more tax liabilities is necessary and states the reason in the notification. There shall, however, be no review of the decision of the examining or investigating officer except that which may be afforded informally by the Commissioner of Revenue in his discretion or in a formal manner as may otherwise be required by law.
- (3) Whenever any person summoned hereunder neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the commissioner through his attorneys may apply to the chancery court for the division within which the person so summoned resides or is found for an attachment against him as for a contempt.

It shall be the duty of the chancellor to whom application is made, as provided hereinabove, to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person and upon his being brought before the court to proceed to a hearing of the case. Upon such hearing the chancellor shall have power to make such orders as he shall deem proper, not inconsistent with the law for the punishment of contempt, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Any commissioned officer or any employee of the Department of Revenue may, in the performance of his official duty, enter in the daytime any building or any place where any articles or objects subject to tax are made, produced, kept or distributed, or where records relating thereto are kept, so far as it may be necessary for the purpose of examining said articles or objects or the records relating thereto; and may also enter at night any such building or place, while open, for a similar purpose.

Authority: T.C.A. §§67-1-1439 and 67-1-1437. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.42 REPEALED.

Authority: §67-1-1439. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1-.43 ASSESSMENT BY COMMISSIONER.

- (1) The director of each of the tax administration divisions within the Department of Revenue who are charged with the responsibility for collecting specific taxes imposed under the revenue laws of the state and made collectible by the Commissioner of Revenue are authorized and required to make all inquiries necessary to the determination and assessment of all taxes referred to hereinabove and to make the determinations and the assessments of such taxes. As the department is presently constituted the authority and responsibility herein authorized shall be extended to and exercised by the following: the Director, Motor Vehicle, Tax Division; the Director, Franchise, Excise, and Income Tax Division; the Director, Petroleum Tax Division; the Director, Miscellaneous Tax Division; the Director, Sales and Use Tax Division. The authority to assess may be redelegated.

(Rule 1320-2-1-.43, continued)

- (2) The assessments herein authorized shall be made by the assessing officer or his delegate recording a taxpayers liability for a specific tax in the department. Such recordation shall provide identification of the taxpayer, the character of the liability assessed, the taxable period where applicable, and the amount of the assessment. The date of the assessment shall be the date the tax is recorded in the department.
- (3) The liability of a taxpayer against whom a assessment is made shall attach immediately upon the making of the assessment.

Authority: T.C.A. §§67-1-1439 and 67-1-1438. **Administrative History:** Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

1320-2-1-.44 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1439. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1-.45 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1440. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.

1320-2-1-.46 REPEALED.

Authority: T.C.A. §§67-1-1439 and 67-1-1441. **Administrative History:** Original rule filed June 7, 1974. Repeal filed June 22, 1989; effective September 27, 1989.